



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[EPA-R08-RCRA-2012-0396; FRL - 9753-6]

#### **Colorado: Final Authorization of State Hazardous Waste Management Program Revisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize states to operate their hazardous waste management programs in lieu of the federal program. Colorado has applied to the EPA for final authorization of changes to its hazardous waste program under RCRA. The EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the state's changes through this final action.

**DATES:** This final authorization will become effective on [insert date 60 days after the date of publication] unless the EPA receives adverse written comments by [insert date 30 days after the date of publication]. If adverse written comments are received, the EPA will publish a timely withdrawal of this final rule in the **Federal Register** and inform the public that this authorization will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R08-RCRA-2012-0396, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *E-mail:* [lin.moye@epa.gov](mailto:lin.moye@epa.gov).
- *Fax:* (303) 312-6341.
- *Mail:* Moye Lin, Region 8, Resource Conservation and Recovery Program, U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, phone number: (303)

312-6667.

- *Hand Delivery or Courier:* Deliver your comments to Moye Lin, Region 8, Resource Conservation and Recovery Program, Mailcode 8P-R, U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Deliveries are accepted only during the Regional Office's normal hours of operation, 9:00 am to 3:00 pm. Special arrangements should be made for deliveries of boxed information. The public is welcome to view Docket ID No. EPA-R08-RCRA-2012-0396 at the Region 8 EPA Library, 1595 Wynkoop Street, Denver, Colorado 80202-1129 during the Library's normal hours of operation, Monday through Thursday, 8:00 am to 4:00 pm, excluding federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R08-RCRA-2012-0396. The EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information, disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected from disclosure through <http://www.regulations.gov>, or e-mail. The federal website, <http://www.regulations.gov>, is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special

characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information may not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy from 9:00AM to 3:00 PM, Monday through Thursday at the EPA Region 8 Library at the address and contact above, or the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530, contact: Randy Perila, phone number (303) 692-3364. The public is advised to call in advance to verify business hours.

**FOR FURTHER INFORMATION CONTACT:** Moye Lin, (303) 312-6667, [Lin.Moye@epa.gov](mailto:Lin.Moye@epa.gov) or Randy Perila, (303) 692-3364, [randy.perila@state.co.us](mailto:randy.perila@state.co.us).

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Why Are Revisions to State Programs Necessary?**

States that have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and ask the EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

**B. What Decisions Have We Made in This Rule?**

We conclude that Colorado's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Colorado Final Authorization to operate its hazardous waste program with the changes described in the authorization application. Colorado has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders, except in Indian country, and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by federal regulations that the EPA promulgates under the authority of HSWA take effect in authorized states before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Colorado including issuing permits, until Colorado is authorized to do so.

**C. What Is the Effect of Today's Authorization Decision?**

This decision means that a facility in Colorado subject to RCRA will now have to comply with the authorized state requirements instead of the equivalent federal requirements in order to comply with RCRA. Colorado has enforcement responsibilities under its state hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to: 1) conduct inspections, and require monitoring, tests, analyses, or reports; 2) enforce RCRA requirements, suspend or revoke permits, and, 3) take enforcement action regardless of whether Colorado has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Colorado is being authorized by this action are already effective under state law, and are not changed by this action.

**D. Why Wasn't There a Proposed Rule Before Today's Rule?**

The EPA did not publish a proposal before this rule because we view this as a routine program change. We are providing an opportunity for the public to comment now. In addition to this rule, we are publishing a separate document that proposes to authorize the state program changes in the proposed rules section of today's **Federal Register**.

**E. What Happens if the EPA Receives Comments That Oppose This Action?**

If the EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. We will then address all public comments in a later **Federal Register** notice. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the Colorado hazardous waste program, we will withdraw only that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified in this document. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

**F. For What Has Colorado Previously Been Authorized?**

Colorado initially received final authorization on October 19, 1984, effective November 2, 1984 (49 FR 41036), to implement the RCRA hazardous waste management program. We granted authorization for changes to the state's program on: October 24, 1986, effective November 7, 1986 (51 FR 37729); May 15, 1989, effective July 14, 1989 (54 FR 20847); May 10, 1991, effective July 9, 1991 (56 FR 21601); April 7, 1994, effective June 6, 1994 (59 FR 16568); November 14, 2003, effective January 13, 2004 (68 FR 64550) and March 12, 2008 (73 FR 13141) effective May 12, 2008; August 12, 2009, effective October, 13, 2009 (74 FR 40518).

**G. What Changes Are We Approving With Today's Action?**

Colorado submitted a final complete program application on December 21, 2011, seeking authorization of their changes in accordance with 40 CFR 271.21. Colorado's revisions consist of regulations that govern Federal Hazardous Waste revisions promulgated from January 8, 2010 through June 4, 2010 (RCRA Clusters XX). In addition, approval today is granted for revisions submitted in a prior application. We now make a final decision, subject to receipt of written comments that oppose this action; that Colorado's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Therefore, we grant Colorado final authorization for the following program changes (the federal citation followed by the analog from the Code of Colorado Regulations (6 CCR 7007-3), revised through December 30, 2011):

<b>Description of federal requirement (include checklist #, if relevant)</b>	<b>Federal Register date and page (and/or RCRA statutory authority )</b>	<b>Analogous state authority</b>
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Land Disposal Restrictions Phase III (Checklist 151)	61 FR 15566-15660 April 8, 1996; 61 FR 15660-15668 April 8, 1996; 61 FR 19117 April 30, 1996; 61 FR 33680-33690 June 28, 1996; 61 FR 36419-36421 July 10, 1996; 61 FR 43924-43931 August 26, 1996; 62 FR 7502-7600 February 19, 1997.	Colorado Hazardous Regulations, 6 CCR 1007-3 effective December 30, 2011; 268.1(c)(3)-(c)(3)(ii), 268.1(c)(4), 268.1(c)(4)(i)-(iv), 268.1(e)(3), 268.1(e)(4), 268.2(f), 268.2(i), 268.2(j), 268.3(a)-(c), 268.3(c)(1)-(6), 268.7(a), 268.7(a)(3)(ii), 268.7(b)(3)(ii), 268.7(b)(4)(iv)-(v), 268.8, 268.9(a) & (d), 268.9(d)(1)(i)-(ii), 268.39(a)-(g), 268.40(a), 268.40(e), 268.40(g), 268.40 Table, 268.42 Table 1, 268.48(a) Table UTS, Appendix XI.
2. Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes (Checklist 189)	65 FR 67068-67133, November 8, 2000.	Colorado Hazardous Regulations, 6 CCR 1007-3 effective December 30, 2011; 261.32, 261 Appendix VII & VIII, 268.33(a), 268.33(b) intro, 268.(b)(1)-(5), 268.33(c), 268.33(d) intro, 268.33(d)(1) & (2), 268.40/Table, 268.40(a)/Table.
3. OECD Requirements; Export Shipments of Spent Lead-Acid Batteries (Checklist 222)	75 FR 1236-1262, January 8, 2010.	Colorado Hazardous Regulations, 6 CCR 1007-3 effective December 30, 2011; 262.10(d), 262.55, 262.58(a), 262.58(a)(1) & (2), 262.58(b), 262.80(a), 262.80(a)(1) & (2), 262.80(b), 262.81, 262.82(a), 262.82(a)(1), 262.82(a)(1)(i) & (ii), 262.82(a)(2) including Note to Paragraph (a)(2), 262.82(a)(2)(i) & (ii), 262.82(a)(2)(ii)(A) & (B), 262.82(a)(2)(iii), 262.82(a)(3), 262.82(a)(3)(i) including Note to Paragraph (a)(3)(i), 262.82(a)(3)(ii) including Note to Paragraph (a)(3)(ii), 262.82(a)(4), 262.82(a)(4)(i) & (ii), 262.82(b), 262.82(b)(1) & (2), including Note to Paragraph (b)(2), 262.82(b)(3), 262.82(c), 262.82(c)(1), 262.82(c)(1)(i) & (ii), 262.82(c)(2), 262.82(d), 262.82(d)(1) & (2), 262.82(e), 262.82(e)(1) & (2), 262.82(f), 262.82(f)(1)-(4), 262.82(f)(5), 262.82(f)(5)(i) & (ii), 262.82(g), 262.83(a), 262.83(b),

Description of federal requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority )	Analogous state authority
4. Hazardous Waste Technical Corrections and Clarifications (Checklist 223)	75 FR 12989-13009, March 18, 2010, 75 FR 31716-31717, June 4, 2010.	<p>262.83(b)(1), 262.83(b)(1)(i)–(iii), 262.83(b)(2), 262.83(b)(2)(i) &amp; (ii), 262.83(c) &amp; (d), 262.83(d)(1)–(14) including Note to Paragraph (d)(14), 262.83(e), 262.84(a), 262.84(a)(1) &amp; (2), 262.84(b), 262.84(b)(1)–(7), 262.84(c)–(e), 262.85(a) &amp; (b), 262.85(b)(1)–(4), 262.85(c), 262.85(c)(1) &amp; (2), 262.85(d) &amp; (e) including Note to Paragraph (e), 262.85(f) &amp; (g) including Note to Paragraph (g), 262.86(a) &amp; (b), 262.87(a), 262.87(a)(1)–(5), 262.87(a)(5)(i) &amp; (ii), 262.87(a)(6), 262.87(b), 262.87(b)(1)–(3), 262.87(c), 262.87(c)(1), 262.87(c)(1)(i)–(iv), 262.87(c)(2), 262.88, 262.89(a), 262.89(a)(1), 262.89(a)(2), 262.89(b)–(d), 263.10(d), 264.12(a)(2), 264.71(a)(3), 264.71(d), 265.12(a)(2), 265.71(a)(3), 265.71(d), 267.80(a) table.</p> <p>Colorado Hazardous Regulations, 6 CCR 1007-3 effective December 30, 2011; 262.23(f), 262.23(f)(1), 262.23(f)(1)(i)–(ii), 262.23(f)(2)–(4).</p>

#### H. Where Are the Revised State Rules Different From the Federal Rules?

Colorado has requirements that are more stringent than the federal rules at 262.55, Colorado requires an exception report be filed with the Colorado Department of Public Health and Environment in addition to the required submission to the EPA Office of Enforcement and Compliance Assurance. Colorado is more stringent in Checklist 151. Colorado has not adopted a state analog to 40 CFR

268.1(c)(3). Colorado does not allow for the disposal of hazardous waste in underground injection wells. Pursuant to state law, Section 25-15-205(3), C.R.S., the disposal of liquid hazardous waste in Colorado is strictly prohibited. This prohibition includes the disposal of hazardous waste in injection wells.

Colorado is broader-in-scope than the federal rules at: 261.32 (K140) and 261 Appendix VII (K901 & K902), 261 Appendix VIII (P909, P910 and P911) and 268.40/table (K140, U408, K901, K902, P910 & P911).

**I. Who Issues and Administers Permits After the Authorization Takes Effect?**

Colorado will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits that were issued prior to the effective date of this authorization until Colorado has equivalent instruments in place. We will not issue any new permits or new portions of permits for the provisions listed in the Table in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Colorado is not yet authorized.

**J. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Colorado?**

Colorado is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes: 1) lands within the exterior boundaries of the following Indian reservations located within or abutting the state of Colorado, a) Southern Ute Indian Reservation and b) Ute Mountain Ute Indian Reservation; 2) any land held in trust by the United States for an Indian tribe, and 3) any other areas that are "Indian country" within the meaning of 18 U.S.C. 1151.

Therefore, this program revision does not extend to Indian country where the EPA will continue to implement and administer the RCRA program.

**K. What Is Codification and is the EPA Codifying Colorado’s Hazardous Waste Program as Authorized in This Rule?**

Codification is the process of placing the state's statutes and regulations that comprise the state's authorized hazardous waste program into the CFR, which occurs when the EPA references the authorized state rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart G, for this authorization of Colorado’s program changes until a later date. The EPA is not codifying the rules documented in this **Federal Register** notice in this authorization application.

**L. Statutory and Executive Order Reviews**

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and, therefore, this action is not subject to review by OMB. This action authorizes Colorado state requirements for the purpose of RCRA 3006, and imposes no additional requirements beyond those imposed by Colorado state law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes state

requirements as part of the state RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency

promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective [insert date 60 days after publication in the Federal Register].

#### **List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 21, 2012.

James B. Martin,  
Regional Administrator,  
Region 8.

**[FR Doc. 2012-28338 Filed 11/20/2012 at 8:45 am; Publication Date: 11/21/2012]**